

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

PHI ACQUISITIONS NSA

Docket No. MC2014-21

PHI ACQUISITIONS NSA

Docket No. R2014-6

UNITED STATES POSTAL SERVICE REPLY COMMENTS
(April 30, 2014)

On March 5, 2014, the United States Postal Service ("Postal Service") filed its "Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add PHI Acquisitions, Inc. Negotiated Service Agreement to the Market-Dominant Product List" ("Notice"). In Order No. 2049, the Postal Regulatory Commission ("Commission") scheduled the deadline for initial comments from interested parties for April 23. Comments were filed by two parties: the Public Representative ("PR Comments"), and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc ("Valpak Comments").¹ Reply comments are due today, April 30.

¹ Public Representative Initial Comments (April 23, 2014); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on PHI Acquisitions, Inc. Negotiated Service Agreement (March 27, 2014), Supplemental Initial Comments (April 10, 2014), and Further Supplemental Initial Comments (April 23, 2014).

The PR Comments provide eight recommendations for the Commission to consider before approving the PHI Acquisitions NSA. Many of the issues raised by the Public Representative are also addressed in the Valpak Comments. In the Postal Service's view, several of these recommendations have been adequately addressed in the Postal Service's initial filing, responses to Commission Information Requests (CHIRs), and the PHI Acquisitions NSA itself. For example, the NSA provides specific instructions on how acquisitions and divestitures will be handled over the life of the agreement.² There is no compelling reason for the Postal Service to provide any additional analysis of acquired and divested titles, beyond what is outlined in the NSA. Additionally, the agreement clearly specifies the calculation of the adjustment factor and how it will be applied.³ The adjustment factor will be rounded to three decimal places, as shown in the Postal Service's financial workpapers.

The Postal Service's initial filing and CHIR responses also demonstrate that the PHI Acquisitions NSA will not cause unreasonable harm to the marketplace.⁴ The Public Representative has not provided sufficient evidence for why the agreement would cause *unreasonable* harm.⁵ The Postal Service believes that competition is not synonymous with unreasonable harm, nor does a single industry represent the marketplace. Thus, the Commission must find that the PHI Acquisitions NSA will do

² PR Comments at 15.

³ PR Comments at 1.

⁴ Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add PHI Acquisitions, Inc. Negotiated Service Agreement to the Market-Dominant Product List, Attachment E, at 3-4 (March 5, 2014).

⁵ PR Comments at 15.

more than just potentially impact a competitor, but that it will unreasonably harm the marketplace, if approved. The Postal Service does not believe there has been persuasive evidence presented in this case, which would support such a finding. In this regard, it is worth noting that no other catalog mailers filed initial comments in opposition to this NSA, alleging that it will cause harm to the marketplace.

The Public Representative's remaining recommendations are unnecessary, premature, or irrelevant to the issues before the Commission. The Postal Service is under no legal obligation to provide the Commission (or any interested party) with periodic reports on the status of negotiations with potential NSA customers.⁶ Nor is the Postal Service's filing insufficient for not providing billing determinant data for PHI Acquisitions.⁷ The Public Representative contends that this is necessary to ensure volume thresholds are accurately calculated. The Postal Service has properly calculated volume thresholds, and will continue to do so over the life of the agreement, by using PHI Acquisitions data.⁸

Additionally, the Public Representative's recommendation to develop a discount cap for each contract year is unnecessary, and would harm the growth potential of this agreement.⁹ A discount cap could discourage PHI from acquiring new catalog titles, and undermine the explicit objectives of this NSA by stifling the volume and revenue growth of the agreement.

⁶ PR Comments at 16.

⁷ PR Comments at 9.

⁸ Billing determinant data has been requested in CHIR No. 4, Question 3, issued April 29, 2014.

⁹ PR Comments at 14.

Finally, it is premature for the Postal Service to demonstrate how thresholds may be adjusted if the exigent price changes are rolled back.¹⁰ The Commission's Order establishing the need for a rollback is currently under review in the U.S. Court of Appeals, District of Columbia Circuit.¹¹ It would also be premature for the Postal Service to provide a financial analysis of the agreement for Years 2-5 using the Commission's approved methodology.¹² Because the baseline volumes will change each year, it would be difficult to accurately perform the Commission's analysis without making several speculative estimates for the baselines and discounts in later years of the agreement. The Postal Service has provided an adequate analysis of the financial impact of this agreement, in order to show that it will improve the net financial position of the Postal Service. The inconsistencies noted in the Valpak Comments exemplify why the Postal Service does not agree with the PRC-approved methodology for determining the net value of a market-dominant NSA. To address Valpak's specific concern, the greater the marginal discount, the greater the expected volume impact of the NSA. A larger marginal discount results in more of the volume above threshold being attributed as a result of the NSA, and thus more net value to the Postal Service.

Conclusion

As explained above, in the Postal Service's initial filing, and in the Postal Service's CHIR responses, this agreement will improve the net financial position of the

¹⁰ PR Comments at 11.

¹¹ U.S. Postal Service v. Postal Regulatory Commission, No. 14-1010 (D.C. Cir.).

¹² PR Comments at 13.

Postal Service. The Postal Service respectfully submits that the Commission should approve the PHI Acquisitions NSA and add it to the market-dominant products list.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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